

LORRAIN ESME OSMAN

a

v.

ELDERS FINANCE ASIA LTD.

COURT OF APPEAL, SINGAPORE

CHAN SEK KEONG J

M KARTHIGESU J

b

GOH JOON SENG J

[CIVIL APPEAL NO. 117 OF 1988]

9 JANUARY 1992

COMPANY LAW: *Whether company involved in moneylending - Whether resident in Singapore - Meaning of 'residence' - Whether 'carrying on business' - Moneylenders Act (Ch. 188), ss. 2, 5, 15.*

c

MONEYLENDERS: *Whether company was resident in Singapore - Meaning of 'residence' - Common law concept - Test - Purposes - Tax cases - Management control of company - Whether 'carrying on business' - Whether business was 'moneylending' - Whether fell under statutory exceptions - Moneylenders Act (Ch. 188), ss. 2, 5, 15*

d

Pica were a corporation incorporated in Panama with the principal purpose of making and facilitating capital investments in enterprises located in Asia and the Far East. Pica also acted as investment management consultants or advisers. In 1988, the respondents E succeeded in title to Pica.

The appellant, L, wanted to purchase 30% in a company incorporated in the Cayman Islands. E agreed to loan US\$1,260,000 to L. In return L signed and delivered a promissory note payable to E within one month. L failed to pay.

e

At the trial it was held that E was not a moneylender within the meaning of the Moneylenders Act (the Act). It was further held that the loan was a offshore loan and E did not carry on the business of moneylending in Singapore within s. 5(1) of the Act.

This was the appeal against the said decision.

f

The issues that were considered in this appeal were:

- (a) whether E was 'residing' in Singapore within the meaning of s. 5(1) of the ACT
- (b) whether E "was carrying on business" in Singapore and
- (c) whether that business was the business of moneylending and if so, whether E came within the exception (c) of the definition of "moneylending" in s. 2 of the Act and
- (d) whether the loan was made in Singapore or outside Singapore.

g

Held:

[1] The tests laid down in tax cases in dealing with "residence cases" are eminently suited to determine whether a moneylender is residing in Singapore because the word "residing in s. 5(1) of the Act is used conjunctively with "carrying on business" in Singapore.

h

[2] The learned trial Judge applied the wrong test in holding that E were not "resident" in Singapore. A corporation is resident where its central management and control is exercised. The evidence clearly shows that the management control of Pica was situated in Singapore and there was evidence from the documents disclosed that other management functions were done in Singapore.

i

a [3] The same circumstances which determine the residence of a company also determines where that company is carrying on business. As Pica was resident in Singapore, it was also “carrying on business” in Singapore.

b [4] It is clear that the loan was made to L in the course of and for the purpose of carrying out Pica’s primary purpose of facilitating a capital investment in an enterprise. Therefore, Pica was not a ‘moneylender’ within the Act since they came within the exception (c) of definition of ‘moneylending’ in s. 2.

[5] The documentary evidence and the oral evidence clearly points to Singapore as the place where the loan transaction was concluded and the place at which the executed promissory note was delivered.

c [Appeal dismissed with costs.]

Cases referred to:

Vernes Asin Ltd. v. Trendale Investment Pte. Ltd. & Anor [1988] 1 MLJ 357 (cit)

The London Finance and Discount Co. Ltd. v. Robert J. Butler and Mary Butler [1929] Ir R90 (cit)

De Beers Consolidated Mines Ltd. v. Howe Ltd. [1906] AC 455 (cit)

Unit Construction Co. Ltd. v. Bullock [1960] AC 351 (cit)

d *Frank H Wright (Constructions) Ltd. & Ors. v. Frador Ltd. & Anor.* [1967] 1 All ER 440 (cit)

Litchfield v. Dreyfijs v. Ek Liong Hin Ltd. [1960] 1 All ER 440 (cit)

For the appellant - Sia Moon Joon; M/s Thio Ying Ying, Chor Pee & Co.

For the respondent - Engelin Teh; M/s Susan Lim, Colin Ng & Partners

JUDGMENT

e **M Karthigesu J:**

f The facts of this appeal are straight and not in dispute. Private Investment Company for Asia (PICA) SA (Pica) were a corporation incorporated in Panama with the principle purpose of making and facilitating capital investments in enterprises located in Asia and the Far East. The region was divided into two groups, the southern countries group comprising Brunei, Indonesia, Malaysia, Papua New Guinea, Singapore, Sri Lanka and Thailand, and the northern countries group comprising Taiwan, Korea, Philippines and Hong Kong. The group office and operating headquarters for the former was in Singapore and for the latter in Japan. There were also representative offices in Indonesia, Malaysia, Thailand and Singapore covering the southern countries group. Concomitant with Pica’s principal purpose was that of acting as investment management consultants or advisers. Sometime between 1983 and 1988 following a reorganisation of the Pica group of companies the respondents succeeded in title to Pica. This action originally commenced in the name of Pica was by an order of Court to carry on these proceedings dated 31 October 1988, carried on in the respondent’s name. For the sake of convenience we shall refer to the respondents hereafter as ‘Pica’. The appellant, Lorrain Esme Osman (Osman) was said to have been a prominent entrepreneur in Malaysia at the material time. It appears from the evidence and the documents disclosed at the trial that Osman was invited sometime in August 1982 to take up 30% of the equity in a company which was being incorporated in the Caymen Islands, a well known tax haven, for the purchase of a bulk carrier and conversion into a drillship, the infamous ‘Eniwetok’, which would subsequently be chartered out. Pica, it appears, were engaged to act and were acting as the financial advisers to this venture which was a joint venture between various parties. On or about 16 August 1982, Osman telexed Pica in which he said:

i I confirm agreement to Keppel entering into purchase agreement on arrangement for me to have option to take up 30 PCT within 30 days.

In the same telex he said that he would be grateful if either Keppel or Pica could arrange for bridging finance in respect of his 30% pending finalization of long term financing arrangements. Pica must have agreed to make the bridging loan themselves for on 20 August 1982, Osman deposited certain securities with Pica's representative office in Kuala Lumpur as security for a loan of US\$1,260,000 to be made to him by Pica. Also on 20 August 1982 Osman telexed Pica confirming his instructions to them that the sum of US\$1,260,000 be paid into Lloyds Bank International in New York on account of Lloyds Bank, Hong Kong, favouring Holman Fenwick William's Hong Kong account. By the same telex he authorized disbursement of the funds on his behalf and to arrange for 'Kempas' to accept the share certificates on his behalf. On 23 August 1982 it appears that Osman signed, sealed and delivered a promissory note for US\$1,260,000 in favour of Pica, payable within one month. This note is not the subject of this appeal but it is pertinent to observe that it was typed on Osman's letterhead bearing his Kuala Lumpur address; provides for the payment of interest calculated by reference to the Singapore inter-bank market; provides that all sums payable under the note are to be in United States dollars and settled through the New York clearing house inter-bank payments system; and provides that the note is made in Singapore and that it shall be governed by and construed in accordance with the laws of Singapore. Before the expiration of one month Osman requested that the payment of the above note be extended by 60 days but Pica would only agree to an extension to 25 October 1982 provided that Osman agreed to roll over the US\$1,260,000 and execute a fresh note. Accordingly on 23 September 1982 Osman executed a second promissory note in terms identical, to the first note, except for the amount payable. The reason given by Osman was that there was some delay in the arrangement for alternative funding. On 1 November 1982 for the same reason Osman requested Pica, again to roll over the amount payable under the second note for a further month. This was agreed to by Pica and on 16 November 1982 Osman executed the promissory note, the subject of this appeal, in terms identical with the first note in every particular, except that the principal amount stated in the note was \$1,296,317.56. The note dated 16 November 1982 was signed by Osman in Kuala Lumpur and sent to Pica in Singapore by express post on 18 November 1982. Osman failed to pay. On 13 April 1983 Pica commenced this action against Osman as the maker of the promissory note dated 16 November 1982 for the principal sum of US\$1,296,317.56 and interest thereon in terms of the note. The defence was as brief as the statement of claim was. It was that Pica carried on the business of moneylending at their operating headquarters and group office for southern countries in Singapore without being licensed to do so under s. 5 of the Moneylenders Act (Ch 188) (the Act) and accordingly the note was illegal and void under s. 15 and unenforceable against Osman. The same issues canvassed at the trial were canvassed before us, namely:

- (a) whether Pica was a moneylender within the meaning of that word as defined by s. 2 of the Act and if so, whether Pica came within exception (c) of the definition;
- (b) whether Pica was residing and carrying on the business of moneylending in Singapore; and
- (c) whether the loan to Osman was made by Pica in Singapore or outside Singapore.

The learned trial Judge decided that Pica was not a moneylender within the meaning of the Act, that the loan was an 'offshore' loan and that Pica did not carry on the business of moneylending in Singapore nor was it residing in Singapore within s. 5(1) of the Act. In his written judgment he said:

The facts of the present case and the law, in my view, put the original plaintiffs [Pica] clearly within the exception. I found that the original plaintiffs were not a "moneylender" within the meaning of the Act.

- a** The original plaintiffs are a Panamanian company with a branch office in Singapore. The defendant is a Malaysian. The loan was funded from New York deposited in a Hong Kong account for the purchase of shares in a company incorporated in the Caymen Islands. The loan was secured by property in Malaysia. It is clear that the loans given by the original plaintiffs were offshore loans and that the original plaintiffs did not carry on the business of moneylending in Singapore nor were they “residing” in Singapore within s. 5(1) of the Act.
- b** In our view it is logical to consider issue (b) before considering issues (a) and (c) because if Pica was not ‘residing’ in Singapore within the meaning of s. 5(1) of the Act, it would not be subject to the provisions of the Act. It was an admitted fact that the loan to Osman was made by Pica as principal and not as agent. It was also admitted that Pica was not licensed under the Act or exempted under s. 36 of the Act. Accordingly we will consider firstly whether Pica was ‘residing’ in Singapore within the meaning of s. 5(1) of the Act, secondly whether
- c** Pica ‘was carrying on business’ in Singapore, thirdly whether that business was the business of ‘moneylending’ and if so whether Pica came within exception (c) of the definition of ‘moneylending’ in s. 2 of the Act and; lastly whether the loan was made in Singapore or outside Singapore. The relevant provisions of the Act which need to be considered are the definition of ‘moneylender’ in s. 2 and exception (c), s. 5(1) and (2) and s. 15. They are as follows:
- d** “money lender” includes every person whose business is that of moneylending or who carries on or advertises or announces himself or holds himself out in any way as carrying on that business whether or not that person also possesses or earns property or money derived from sources other than the lending of money and whether or not that person carries on the business as a principal or as an agent but does not include:
- e** (c) any person bona fide carrying on the business of banking or insurance or bona fide carrying on any business not having for its primary object the lending of money in the course of which and for the purposes whereof he lends money;
- Section 5(1) Every moneylender residing and carrying on the business of moneylending in Singapore whether as principal or as an agent shall take out a licence annually.
- f** (2) A licence shall be taken out in respect of each name under which moneylending business is conducted. No licence shall be granted to a person not ordinarily resident in Singapore or to a firm where the person proposed to be responsible for the management of the firm is not ordinarily resident in Singapore.
- Section 15 No contract for the repayment of money lent by an unlicensed moneylender shall be enforceable: Provided ...
- g** *Was Pica residing in Singapore*
- It is not surprising that neither Counsel was able to refer us to any authority dealing with ‘residence’ or ‘residing in’ in the context of moneylending legislation anywhere. We ourselves have been unable to find any. The reason seems obvious. ‘Residence’ in a particular jurisdiction or ‘residing in’ a particular jurisdiction so as to be subject to the moneylending legislation of that jurisdiction rarely if ever becomes an issue. The two moneylending cases
- h** referred to us, *Vernes Asia Ltd. v. Trendale Investment Pte. Ltd. & Anor.* [1988] 1 MLJ 357 and *The London Finance and Discount Company Ltd. v. Robert J Butler and Mary Butler* [1929] Ir R 90 are not directly in point and offer no assistance in deciding whether Pica was residing in Singapore within the meaning of s. 5(1) of the Act. Accordingly both Counsel were driven to relying on tax cases. The concept of ‘residence’ is peculiar to the common law. The test to be applied in determining ‘residence’ of a corporation varies according to
- i** the purpose for which it has to be determined. Accordingly three distinct lines of authorities

have developed depending on whether ‘residence’ has to be determined for the purposes of tax, or for the purposes of ascertaining its amenability to jurisdiction or for the purposes of determining its enemy character. In our view it is more appropriate to look at the tax cases for guidance rather than the line of cases dealing with “residence” for the purposes of ascertaining amenability to jurisdiction or for the purposes of determining enemy character as both tax cases and moneylending cases are to do with the business of the company. Further, in our view, the tests laid down in the tax cases are eminently suited to determine whether a moneylender is ‘residing’ in Singapore because the word ‘residing’ in s. 5(1) of the Act is used conjunctively with ‘carrying on the business’ in Singapore.

In *De Beers Consolidated Mines Ltd. v. Howe Ltd.* [1906] AC 455 at 456 Lord Loreburn L.C. in his speech to the House of Lords said:

In applying the conception of residence to a company, we ought, I think, to proceed as nearly as we can upon the analogy of an individual. A company cannot eat or sleep, but it can keep house and do business. We ought, therefore, to see where it really keeps house and does business. An individual may be of foreign nationality, and yet reside in the United Kingdom. So may a company ... The decision of Kelly C.B. and Huddleston B. in the *Calcutta Jute Mills v. Nicholson* and the *Cesena Sulphur Co. v. Nicholson*, now thirty years ago, involved the principle that a company resides for the purposes of income tax where its real business is carried on. Those decisions have been acted upon ever since. I regard that as the true rule, and the real business is carried on where the central management and control actually abides.

More recently in *Unit Construction Co. Ltd. v. Bullock* [1960] AC 351 (not cited in argument) Viscount Simonds in his speech to the House of Lords said:

The business is not less managed in London because it ought to be managed in Kenya. Its residence is determined by the solid facts, not by the terms of its constitution, however imperative. If, indeed, I must disregard the facts as they are, because they are irregular, I find a company without any central management at all. For, though I may disregard existing facts I cannot invent facts which do not exist and say that the company’s business is managed in Kenya. Yet it is the central place of management, which, however much or little weight ought to be given to other factors, essentially determines its residence.

Finally, Dicey and Morris on *The Conflict of Laws* 11th Edn., Vol. 2 at p. 1123 in r. 173 enunciated the rule of residence of a corporation as follows:

A corporation is resident in the country where its central management and control is exercised. If the exercise of central management and control is divided between two or more countries then the corporation is resident in each of those countries.

The House of Lords case of *Swedish Central Railway v. Thompson* [1925] AC 495 is cited in support of the second proposition contained in the Rule.

Turning now to the facts, the only witness called by Pica, indeed the only witness in the whole case, said:

Pica SA has an office in Singapore, it is the Regional HQ for the Group. The management members were mostly in Singapore; the Board of Directors were from different countries of the world. Yes from Singapore we direct money to be lent from N.Y. to H.K.

Yes the request by the debt for this loan was made to the Singapore office. Yes and that is at AB 102. “Pica S’pore” at AB 102 was Pica SA. Mr Peter Phillips was Vice-President of Pica S.A ...

Yes it was sent by Pica SA, not by Phillips but by authorized people in treasury dept of Pica SA. Yes it was directed from Singapore.

- a** No funds kept in Singapore by Pica SA, all funds kept outside Singapore ...
- The loans to these companies are initially identified by the local officers of the various countries. The management in Singapore provides the final approval.
- b** Further it was not disputed that Pica although registered in Panama was also registered in Singapore as a foreign company. Admittedly the evidence is skimpy but it does clearly show that the management control for the southern region was situated in Singapore and that to our minds must determine that Pica was also resident in Singapore. There was no evidence that any management decisions were made from Panama. But there was evidence from the documents disclosed that other management functions were done in Singapore as for example the auditing of Pica's accounts.
- c** The learned trial Judge however founded his decision on residence on the fact that Pica was a Panamanian company with a office in Singapore; that the borrower, Osman, was a Malaysian; that the loan was funded from New York and deposited in a Hong Kong account for the purchase of shares in a company incorporated in the Caymen Islands; and that the loan was secured by property in Malaysia. The learned Judge, in our view applied the wrong test. He ought to have directed his mind to where the management control of Pica was and had he done so he would not have concluded that Pica was not 'resident' in Singapore within
- d** s. 5(1) of the Act.
- Was Pica carrying on business in Singapore*
- In our view the same circumstances which determine the residence of a company also determines where that company is carrying on its business. This is borne out by the tax cases in general and in particular the two tax cases we have referred to above. 'Residence' and 'carrying on business' are concomitant.
- e**
- f** The learned Judge appears to have been influenced by the fact that the loan was funded from New York and deposited in a Hong Kong account for the purchase of shares in a company incorporated in the Caymen Islands, that it was an 'offshore' loan as referred to in the evidence of the only witness at the trial, in coming to the conclusion that the Pica was not carrying on the business of moneylending in Singapore. We are under this rubric addressing the question of business in general and not the business of moneylending. We will endeavour to show later that a moneylender who is otherwise carrying on the business of moneylending in Singapore cannot simply by funding the loan from outside Singapore and paying it to the borrower outside Singapore contend that that transaction is not a moneylending transaction within the meaning of the Act.
- g** Since we are of the view that Pica was 'resident' in Singapore we are also of the view that Pica 'was carrying on business' in Singapore.
- Was Pica's business that of moneylending and if so did it come within exception (c) of the definition of 'moneylender' in s. 2 of the Act.*
- h** It is not denied by Pica that it did give short term loans from time to time. It is also not denied that Pica was mainly concerned with medium and long term loans. That admission by itself is sufficient in our view to raise the presumption that Pica was a moneylender within the meaning of the Act. If any authority is needed for this proposition one has only to look at *Frank H Wright (Constructions) Ltd. & Ors. v. Frodoor Ltd. & Anor.* [1967] 1 All ER 433 and the Privy Council case of *Official Assignee v. Ek Liang Hin Ltd.* [1960] 1 All ER 440.
- i**

The real question to be decided, as in the two cases above referred, is whether the transaction ie the bridging loan to Osman, comes within exception (c) of the definition of 'moneylender' in s. 2 of the Act.

The starting point is to ascertain the 'primary object' of Pica. Its articles of incorporation states that its principal purpose is the making and facilitating of capital investments in enterprises located in such countries in Asia and the Far East as the board of directors shall from time to time determine and that in order to enable it to carry out this purpose it shall have the powers, *inter alia*, to render research, advisory, managerial, supervisory, financial and other technical assistance and to lend money and guarantee obligations. The evidence, in our view, clearly established that Pica was already involved in a venture in an advisory role and that this loan was made to Osman, at his request, to enable him to take up equity in that venture.

The only witness who gave evidence at the trial said:

Sometime in 1982 Pica SA acted as adviser to a joint venture project whereby a co. was formed in the Caymen Islands for the purpose of purchasing a drillship. Later the debt was to take up 30% of the equity. He did not have sufficient funds so he approached Pica SA for a 30-day bridging loan of US\$1.26m. The plaintiffs agreed.

We have already referred to the telexes exchanged between Osman and Pica which support the evidence. It is clear to us, as it was to the learned Judge, that the loan was made to Osman in the course of and for the purpose of carrying out Pica's primary purpose of facilitating a capital investment in an enterprise. The enterprise is not the Caymen Islands company but the drillship which it owned and whose investors it is reasonable to assume from the telexes were in this region which is covered by Pica's primary purpose.

The complaint of Osman as we understand it is that the annual accounts show that Pica's profitability came from the loans and from this we are asked to infer that notwithstanding the stated principal purpose, the lending of money was the actual principal purpose. We cannot accept this. The role of providing research, and providing advisory, managerial, supervisory, financial and other technical assistance is often intangible but can no less be primary. We have no doubt that it was so in this case and in this sense this case is no different from *Frank H Wright v. Frodoor* in which case the primary object of the issuing house was that of-making available capital temporarily for the flotation of public companies.

We have commented that the evidence in this case was skimpy. However on the evidence, such as it was, we are satisfied that the learned Judge came to a correct conclusion that Pica was not a 'moneylender' within the meaning of the Act since they came within exception (c) of the definition of 'moneylending' in s. 2.

Was the loan made in Singapore or outside Singapore

Pica contend that the loan was made outside Singapore. Pica's witness, the only witness who gave evidence at the trial, said:

The loan to the debt was an offshore loan; it was not a lending in Singapore.

An offshore loan is one in which the borrower is a non-resident of Singapore and the funds come from outside Singapore and are remitted to an a/c outside Singapore. It is a loan made outside of Singapore. In this case the funds were lent to debt who was resident in Malaysia; he was a prominent businessman in Malaysia. The funds came from an a/c in New York and remitted to an a/c in HK in accordance with the debt's instructions ...

a The loan was funded from NY deposited in HK, given to a Malaysian and secured by properties in Malaysia. This was clearly an offshore loan.

There were several occasions when loans of this nature were made by the plaintiffs but all made in a manner described as offshore loans ...

b This loan which plaintiffs gave to the debt was loan financing and was ancillary to its investment objectives; the loan that was given to Mr Osman was a loan given as an offshore loan. It was not a lending in Singapore.

Osman contended that the loan was made in Singapore and his Counsel questioned the witness on the promissory note. Her answers were as follows:

Q: Why was the law of Singapore chosen for the P/N signed by debt.

c A: I do not know the answer. I was only the financial controller and was not directly involved in the details of the loan. Yes I ventured that it was probably an error.

Q: Ex P10 reads "This promissory note is made in Singapore and shall be governed by and construed in accordance with the laws of Singapore.

A: I do not know why it was stated as made in Singapore and why it was to be construed in accordance with the laws of Singapore.

d Q: You have no basis to state that it was an error.

A: Yes I was guessing.

In further cross-examination the witness was asked:

e Q: If it was desirable could the short term loan to the debt be made by Pica Pte. Ltd., the Singapore company.

A: No. It would not be made by the Singapore co. because it was an offshore loan.

Q: Had the debt taken a plane down to Singapore and signed the P/N, would the position be different.

A: It is a question of law. I can't answer.

f This then was the state of the evidence. The promissory note in question on which the claim is founded was manifestly signed by Osman in Kuala Lumpur and sent to Pica in Singapore by express post. This promissory note was clearly intended to replace the second promissory note and the second promissory note was clearly intended to replace the first promissory note both of which it is reasonable to assume were also signed in Kuala Lumpur by Osman and sent to Pica in Singapore. All three promissory notes were typed on note paper bearing Osman's Kuala Lumpur address. The request for the initial loan, as were the requests for the extensions, were made to Pica in Singapore; the decision to grant the initial loan and the subsequent extensions were made by Pica in Singapore where its management control was. Pica provided the wording for all three promissory notes which we have already observed were in identical terms and which provided for interest based on SIBOR and which clearly provided that it was made in Singapore and shall be governed by and construed in accordance with the laws of Singapore, and that Osman accepted the terms of the promissory note. Lastly the promissory note made provision for settlement through the New York clearing house inter-bank payments system.

h Before we proceed further we must observe that during the hearing of the appeal we pressed Pica's Counsel for an answer as to where the loan was made, if as she contended it was made outside Singapore. Her answer was that she could not say except that she maintained that it was outside Singapore.

i

Now, if Pica was carrying on the business of moneylending in Singapore, as we have found, the mere fact that the loan was disbursed from funds kept outside Singapore and that it was paid to Osman to an account designated by him outside Singapore could not by itself amount to the loan being made outside Singapore. If that were so, then, the sanctions of the Act could easily be avoided by simply entering into a transaction in Singapore and paying the loan from funds kept outside Singapore to the borrower who would receive the loan outside Singapore. That could not have been intended by the Act. It was clearly intended to regulate moneylenders carrying on the business of moneylending. To quote the words of Farwell J in *Litchfield v. Dreyfys* [1906] 1 KB 584 at 590:

The Act was intended to apply to persons who are really carrying on the business of moneylending as a business, not persons who lend money as an incident of another business or to a few old friends by way of friendship. This particular Act was supposed to be required to save the foolish from the extortion of a certain class of the community who are called moneylenders as an offensive term.

What he said in respect of the English Moneylenders Act 1900 is equally true of the Act.

But that is not to say that a moneylender properly carrying on the business of moneylending in Singapore cannot in any case make a loan to a person who is not a resident of Singapore and even to a person ordinarily resident in Singapore in such circumstances which are outside the Act altogether. That would depend on the particular facts of the transaction and what the parties really intended. That is not this case.

The crucial question in this case is where the transaction was concluded; where the promissory note was made. Unfortunately neither party seriously addressed this question. But the documentary evidence which we have rehearsed above, and we must say that the oral evidence given at the trial neither adds to it nor detracts from it, clearly points to Singapore as the place where the loan transaction was concluded and the place at which the executed promissory note was delivered. The declaration in the note itself that the note 'is made in Singapore and shall be governed by and construed in accordance with the laws of Singapore' shows that the parties intended that the loan was to be made in Singapore notwithstanding that Pica may have intended that the loan be disbursed from funds outside of Singapore and Osman intended that the loan should be paid to him outside Singapore.

Conclusion

We are in agreement with the learned Judge that on the facts of this case and the law Pica comes clearly within exception (c) of the definition of 'moneylender' in s. 2 of the Act. We are not in agreement with him on the questions of Pica's residence and the carrying on of the business of moneylending. In the result we have reached it is immaterial where the loan was made.

The defence of 'moneylending' compendiously pleaded by Osman that Pica was not licensed under s. 5 of the Act and accordingly that the loan transaction and the promissory note dated 16 November 1982 are void and unenforceable against Osman fails.

Accordingly this appeal is dismissed with costs to the respondents.

Also found at [1992] 1 CLJ 579

a

b

c

d

e

f

g

h

i